

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DESIRAE SCOTT, *et al.*,

Plaintiffs,

v.

ANTONIA HEREDIA, *et al.*,

Defendants.

Case No. 1:24-cv-01067-KES-CDB

ORDER DISCHARGING ORDER TO
SHOW CAUSE

(Doc. 17)

ORDER EXTENDING *NUNC PRO TUNC*
PLAINTIFFS' DEADLINE TO FILE PROOF
OF SERVICE FOR CYNTHIA BERTRAND
AND DIRECTING DISMISSAL OF
CERTAIN DEFENDANTS

ORDER CONTINUING THE
MANDATORY SCHEDULING
CONFERENCE TO MAY 16, 2025, AT 9:00
A.M.

ORDER DIRECTING PLAINTIFFS TO
EFFECT SERVICE OF THIS ORDER AND
TO FILE PROOF OF SERVICE

FIVE-DAY DEADLINE

Background

Plaintiffs Desirae Scott, Johnathan Williams, and minors S.W. and D.W. through their *guardian ad litem* Desirae Scott (collectively, "Plaintiffs"), initiated this action with the filing of a complaint on September 7, 2024. (Doc. 1). Plaintiffs thereafter were granted status to proceed

1 *in forma pauperis*. (Doc. 12).

2 On March 10, 2025, the Court ordered Plaintiffs to show cause (“OSC”) in writing within
3 three days why sanctions should not be imposed – including dismissal of any unserved Defendant
4 or this action in its entirety – for Plaintiffs’ failure to prosecute, failure to serve the summonses
5 and complaint in a timely manner, and failure to promptly file proof of service. (Doc. 17).
6 Additionally, the Court continued the scheduling conference to April 16, 2025, at 9:00 a.m. and
7 ordered Plaintiffs to serve a copy of the OSC on Defendants within three (3) days of its entry and
8 promptly file proof of service thereof.

9 On March 13, 2025, Plaintiffs filed their response to the OSC. (Doc. 18).

10 **Discussion**

11 Here, Plaintiffs’ counsel attests that this is his first case in the Eastern District of California
12 and that he was unfamiliar with the procedure for issuing summons in this district, as well as for
13 service of process by the U.S. Marshals Service. Counsel states that in a separate federal district
14 where he practices, in cases involving indigent Plaintiffs like the instant action, the summonses
15 are submitted to the court and the court automatically assigns the U.S. Marshals to serve them. He
16 avers that the electronic filing system in this district does not offer such an option and when he
17 contacted the Clerk of the Court, he was told to wait for the Court to issue summonses and for the
18 U.S. Marshals to serve the Defendants. He represents that he did not receive notification of the
19 issuance of the summons (Docs. 14, 15) and did not see any phone alert of the issuance of the case
20 documents (Doc. 16), only seeing them upon receiving the OSC. (Doc. 18-1 at 2).

21 Counsel further attests that he has served Defendants Antonia Heredia, Maria Tinoco,
22 Dizander Guerrero, Maira Puente, Ashley Bryant, and Fatima Dee. He represents that he does not
23 have the correct address for Cynthia Bertrand, having attempted service twice in California City
24 and once in Lancaster. He represents that Bisola Awaye has moved out of state and that Carole
25 Allen and Desire Lopez were misidentified. As such, he avers that Awaye, Allen, and Lopez will
26 be dismissed. *Id.* at 3.

27 In light of the representations by counsel for Plaintiffs in responding to the Court’s OSC,
28 the Court concludes that counsel’s conduct cited in the OSC is the result of excusable neglect. *See*

1 *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007). Accordingly, the Court
2 will discharge its March 10, 2025, order to show cause (Doc. 17).

3 In their response (Doc. 18), Plaintiffs represent that service was completed upon Defendant
4 Antonia Heredia. However, Plaintiffs have not filed any executed summons evidencing such (*cf.*
5 Docs. 19-24); accordingly, Plaintiffs will be directed to file a proof of service/summons returned
6 executed.

7 **Conclusion and Order**

8 Based on the foregoing, it is HEREBY ORDERED that:

- 9 1. The Court's order to show cause (Doc. 17) is DISCHARGED;
- 10 2. Plaintiffs' deadline for filing proof of service of the summons and complaint on
11 Defendant Cynthia Bertrand is extended *nunc pro tunc* by 30 days to April 14, 2025;
- 12 3. Plaintiffs shall file notices of dismissal of Defendants Carole Allen, Bisola Awaye, and
13 Desire Lopez no later than April 14, 2025;
- 14 4. Plaintiffs shall file executed summons as to Defendant Antonia Heredia **within five (3)**
15 **days** of entry of this order.
- 16 5. To facilitate service and permit the pleadings to settle, the scheduling conference
17 previously set for April 16, 2025, is CONTINUED to May 16, 2025, at 9:00 a.m.
- 18 6. Plaintiffs shall serve a copy of this order on Defendants **within five (5) days** of entry
19 of this order and promptly file proof of service thereof.

20 IT IS SO ORDERED.

21 Dated: **March 14, 2025**

22 
UNITED STATES MAGISTRATE JUDGE